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ABSTRACT

The Subcommittee on Truth in Testing of the Interim Joint Committee on Education was formed in response to Senate Resolution 43 of the 1982 Kentucky General Assembly. Its task was to study the questions regarding the effectiveness and equity of standardized testing, which has become an important part of the academic experience of public school children and a major factor in determining who is admitted to professional programs in such fields as medicine, dentistry, and law. The subcommittee was required to determine whether legislation regarding disclosure of test data was needed in Kentucky. The subcommittee heard testimony, both pro and con, over an eight-month period from test publishers and test sponsors, admissions officers, and representatives of the National Education Association and the Kentucky Education Association. On the basis of that testimony, summarized in the report, the subcommittee concluded that there was little support in Kentucky for disclosure legislation. Therefore, none was recommended. Disclosure legislation from California, New York, and New Jersey is appended. (Author/BW)

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REGULATION OF STANDARDIZED TESTING IN KENTUCKY

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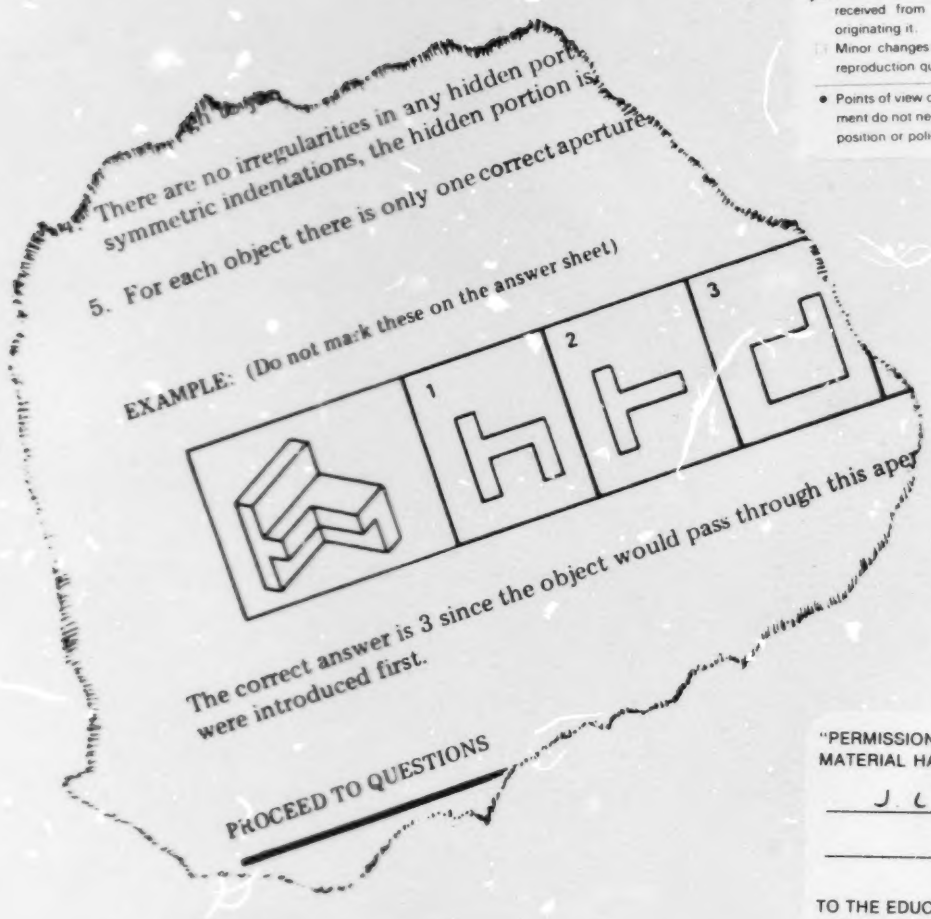
There are no irregularities in any hidden portion
symmetric indentations, the hidden portion is
5. For each object there is only one correct aperture
EXAMPLE: (Do not mark these on the answer sheet)
1
2
3
The correct answer is 3 since the object would pass through this aper
were introduced first.
PROCEED TO QUESTIONS

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Research Report No. 209

Legislative Research Commission
Frankfort, Kentucky

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REGULATION OF STANDARDIZED TESTING IN KENTUCKY

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of the
Interim Joint Comittee on Education

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Research Report No. 209

Legislative Research Commission
Frankfort, Kentucky
January, 1984

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FOREWORD

Standardized testing of public school students is a firmly established practice in the United States. In the past two decades, however, critics of such testing have raised numerous questions regarding its validity, its appropriateness, and its fairness. Some have called for regulations regarding disclosure of test data. The 1982 Kentucky General Assembly addressed the subject with Senate Resolution 43, which called for the appointing of a legislative committee to study standardized testing in education. The following report, in response to that resolution, represents the work of the Subcommittee on Truth in Testing of the Interim Joint Committee on Education. The report was prepared by Janie Jones and typed by Carole Suter.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
January, 1984

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SUMMARY

The Subcommittee on Truth in Testing of the Interim Joint Committee on Education was formed in response to Senate Resolution 43 of the 1982 Kentucky General Assembly. Its task has been to study the questions regarding the effectiveness and equity of standardized testing which has become an important part of the academic experience of public school children and a major factor in determining who is admitted to professional programs in such fields as medicine, dentistry, and law. The subcommittee was required to determine whether legislation regarding disclosure of test data is needed in Kentucky. The subcommittee heard testimony, both pro and con, over an eight-month period. On the basis of that testimony, summarized in the report which follows, the subcommitte concluded that there is little support in Kentucky for disclosure legislation. Therefore, none is recommended.

REGULATION OF STANDARDIZED TESTING IN KENTUCKY

INTRODUCTION

In 1982, the Kentucky General Assembly passed Senate Resolution 43, which required that a legislative committee be appointed to study the area of standardized testing in education. The purpose of the study was to determine whether legislation relating to disclosure of test data is needed in Kentucky. Questions regarding disclosure grew out of a national concern over accuracy in test items, test scoring, and interpretation and reporting of test results.

The Legislative Research Commission appointed the committee required by SR 43 as a subcommittee of the Interim Joint Committee on Education. In determining the scope of activities, the subcommittee members agreed that, although the resolution refers specifically to testing for admission to higher education programs, the statewide elementary and secondary educational testing program should be a part of the study. Therefore, the subcommittee decided to include the Comprehensive Test of Basic Skills (CTBS) in its investigation. The CTBS is given annually to all Kentucky public school students in grades three, five, seven, and ten.

Over an eight-month period, the subcommittee heard testimony in opposition to legislation from representatives of the College Board, the Law School Admissions Council, the American College Testing Program, the American Association of Medical Colleges, the Educational Testing Service, and CTB/McGraw-Hill Publishing Company. In addition, the American Dental Association provided written testimony opposing any legislation.

Admissions officers representing the different types of programs offered in Kentucky were invited to discuss the use of test scores. Represented were medical, dental, law, and undergraduate programs; community colleges; independent colleges; and the Kentucky Association of College Registrars. All were opposed to legislation.

Speaking in favor of test disclosure legislation were the National Education Association and the Kentucky Education Association.

HISTORY OF DISCLOSURE LEGISLATION

Prior to 1958, a test score was not reported to a student but was sent to admissions offices of those colleges designated by the student. Following a change in policy by the College Entrance Examination Board in 1958, however, test publishers now report scores to students as well as to institutions.

In the mid-seventies, students began to question the accuracy of scores reported on standardized tests. This trend resulted in questions concerning the accuracy of the tests themselves. The concern with accuracy led to various proposals that the tests, the correct

answers, and the student's answers be released following each administration of the test. The test disclosure movement, starting in California and moving to New York, became known as "truth-in-testing."

In both California and New York, various student groups and such educational organizations as the National Education Association, as well as Ralph Nader's consumer group, initiated an intense lobbying campaign for passage of legislation requiring testing companies to disclose test information.

In 1978, California passed the first such law, requiring limited disclosure of test information. The law (see Appendix A) applies to any standardized test required for admission to postsecondary education programs and taken by 3,000 or more students. The testing agency must provide the following information to the student prior to the administration of the test:

- purpose of the test,
- subject matter of the test and the knowledge and skills it is supposed to measure,
- how the test is scored and the relationship of the raw and scaled scores to the skills and knowledge it measures,
- how the scores will be made available to individuals and institutions, and
- sample test items.

In addition to providing specific information to the student both before and after he takes the test, the test agency must file copies of representative tests (not those currently in use) and various kinds of data describing the test features, limitations, and use, with the state post-secondary education commission. The same information must be provided to the educational institutions.

Although the California law does not require the release of any test currently being used, the New York disclosure law (see Appendix B), passed a year later (1979), does require that upon request the student be provided with a copy of the test, the correct answers, and the student's answers.

Following passage of the New York law, some tests were withdrawn from the state by the testing companies, and the American Medical Association has obtained a temporary injunction against the state, pending the outcome of a court suit challenging the disclosure law.

A number of other states have introduced disclosure legislation, but as of this writing none has been passed. New Jersey has introduced the most comprehensive bill at this point. The proposed New Jersey law requires release of tests at all levels, including elementary and secondary. There have been delays, however, in bringing the bill to a vote in the full legislature.

On the national level, two bills (HR 4949 and HR 3564) to insure that disclosure be uniform in all states for all standardized tests have been proposed. Although the legislation is supported by a number of organizations, including the National Education Association, there has been no congressional action on the bills since 1981.

In early 1980, the College Board, the Graduate Record Examination Board, the Graduate Management Admissions Council, the Law School Admisssions Council, and the Educational Testing Service jointly issued a paper entitled, "Public Interest Principles for the Design and Use of Admissions Testing Programs." The paper was publicized as a set of guidelines for future developments in standardized testing.

The guidelines stress the public's right to know what the tests contain and their intended function, the initiation of publicly visible procedures for eliminating test bias, and the need for routine procedures for verification of test score accuracy. The guidelines further state that testing should be readily available to all individuals, regardless of handicap or other conditions, and that tests and scoring and reporting procedures should be designed "to provide test takers with as much useful information as may be feasible about the specifics of their performance on the tests."

The Debate Over Testing Legislation

In 1980 the Education Commission of the States (ECS) issued a comprehensive report (*Searching for the Truth About 'Truth in Testing" Legislation*) on the question of disclosure legislation. That report divided the arguments for and against legislation into four clusters:

(1) the role and power of the testing companies,
(2) the nature and quality of standardized tests,
(3) the need for legislation and the problems with existing and proposed legislation, and
(4) the consequences of full disclosure. (See Appendix D.)

Apparently the arguments have changed very little since the mid-sixties. However, the use of test results as public indicators of educational quality has increased tremendously. At the same time, the individual's "right to know" has emerged as one of the major social issues of today.

Standardized Testing in Kentucky

College Level

One entire meeting of the subcommittee was devoted to hearing testimony from admissions officers concerning the institutional use of standardized test scores. Both public and private institutions of higher education were represented. Although all applicants for admission to the institutions are required to submit scores from the American College Testing Program (ACT) or the Scholastic Aptitude Test (SAT), the admissions officers were in agreement that low scores seldom cause a student to be denied admission. Whether a student is admitted or rejected is largely determined by type of high school curriculum, high school grades, and personal recommendations. The admissions officers indicated that

performance in high school, as measured by grade point average, is the best single predictor of college performance, and that the primary use of standardized test scores is for placement into specific programs, especially those programs where enrollments must be limtied, such as nursing and dental hygiene. Even in program placement, scores are just one of several factors used to determine admission.

Considering the limited use of test scores by the higher education institutions, the cost to the students for taking the tests, and the fact that less than half of Kentucky's high school graduates attend college, the committee questions the need for administering the tests at high school level.

In Kentucky each year about 25,000 public high school students pay $9.50 each to take the ACT. Approximately 3,000 students in nonpublic schools take the SAT, at a cost of $10.50 each. In both cases, the charge includes sending results to three schools designated by the student. Additional reports cost $2.00 each. For certain test administrations, the student may obtain upon request a copy of the test, the correct answers, and his answers, as provided by the New York law. If test disclosure is requested, the student pays an additional $4.75 for the ACT and $2.50 for the SAT. In New York, all students pay a surcharge of $2.00 for the ACT and $1.75 for the SAT. The testing companies claim such a surcharge is necessary to help pay for the added costs of meeting the requirements imposed by the New York disclosure law.

With passage of the New York law, the Law School Admissions Council initiated a nationwide policy of automatic test disclosure without increasing the charge to the student. The initial charge for taking the test is currently $56.00, which includes sending one report to the student and one to a designated school. Additional reports are $5.00 each.

The Dental Admissions Test is partially exempt from the disclosure law, and the Medical College Admissions Test is totally exempt, under a court order. The dental test is administered annually in Kentucky to about 200 students, at a cost of $25.00 per student. Slightly less than 600 Kentucky students take the medical exam annually, at a cost of $45.00.

Elementary and Secondary Education

Approximately 200,000 public school students in grades three, five, seven, and ten take the Comprehensive Test of Basic Skills (CTBS) each year in Kentucky. Testing of public school students in those grades was mandated by the General Assembly with passage of the Educational Improvement Act of 1978. The major purpose of the tests, as stated in the Act, is to identify those students needing remedial instruction. The state has appropriated around $350,000 annually for testing. In addition to the mandated testing, some districts test students in all grades each year. A number of nonpublic schools also administer the CTBS.

Most school districts will discuss the test scores with parents, upon request, but

neither the test nor the answers are disclosed to the parents. The tests are administered by the school district in the spring and returned to the Department of Education, where they are computer scored. Scores are compiled by district and returned to the local superintendent.

CONCLUSION

Testing agencies point out that they are voluntarily providing information on tests and that legislation is therefore not needed. Proponents of legislation claim that prior to passage of the New York law disclosure was extremely limited and was initiated in an attempt to prevent the passage of legislation.

Recent national publicity concerning errors in the tests themselves, scoring of the tests, and the reporting of test scores has created an impression that a majority of the population is being adversely affected by standardized testing. However, nationwide there appears to be little support for legislation requiring disclosure. More than half the states have considered the question without passing any type of legislation. In the two states in which laws have been enacted, a highly organized, highly visible group of students concerned with social issues has coordinated efforts to obtain support for passage of disclosure legislation. Such student groups exist but have not been active in other states.

After several months of open meetings, the subcommittee found no greater support for legislation in Kentucky than has been exhibited in other states. This circumstance may be due in part to the fact that upon implementation of the New York law, the major testing organizations voluntarily extended the disclosure required by the New York law to all the states. The subcommittee also found significantly, that the number of students requesting test answers was very small.

Recommendation

Based on available evidence, the subcommittee determined that no legislation concerning standardized tests is needed at the present time, and therefore none is recommended. However, the members believe that the Interim Joint Committee on Education and the General Assembly should monitor future developments in the area of standardized testing in order to be prepared to propose appropriate legislation should it become necessary.

APPENDIX A

CALIFORNIA LEGISLATION

APPENDIX A

CALIFORNIA LEGISLATION

CHAPTER 3

Standardized Tests

[Added by Stats 1978 ch 1217 § 2.]

§ 99150. Definitions
§ 99151. Report of closing date of testing year
§ 99152. Filing copies of test with commission
§ 99153. Filing data sufficient to describe psychometric quality of test: Compliance with guidelines of Standards for Educational and Psychological Tests of American Psychological Association
§ 99154. Additional data filed with commission: Submission of financial disclosure information
§ 99155. Effect of separate fee charged test subjects for admissions data assembly services
§ 99156. Information filed considered public record subject to disclosure under California Public Records Act: Rights protected by copyright laws
§ 99157. Information provided subjects prior to test
§ 99157.5. Opportunity for test subject to examine questions and answers
§ 99158. Distribution of information to facilitate interpretation of scores: Information provided institution that test subject designates as test score recipient
§ 99159. Submission of test sponsor's national or regional aggregation of data concerning predictive validity of test scores and grades
§ 99160. Civil liability for intentional violation of chapter provisions

§ 99150. Definitions

As used in this chapter:

(a) "Admissions data assembly service" means any summary or report of grades, grade point averages, or standardized test scores of an applicant used by any postsecondary educational institution in its admissions process.

(b) "Commission" means the California Postsecondary Education Commission.

(c) "Secure test" means any test which contains items not available to the public and which, to allow the further use of test items and to protect the validity and reliability of the test, is subject to special security procedures in its publication, distribution, and administration.

(d) "Standardized test" or "test", for purposes of this chapter, means any test administered in California to at least 3,000 individuals during a testing year and which is formally required by institutions of postsecondary education for the purposes of admissions to those institutions.

"Standardized test" or "test" does not include a test, or part of a test, which is administered to a selected group of individuals solely for research, pre-test, guidance, counseling, or placement purposes, for credit-by-examination purposes, or for purposes of meeting graduation requirements of secondary schools. Tests which are administered as supplements or auxiliaries to another test, or which form a specialized component of a test, may be combined for the purposes of this chapter.

(e) "Test subject" means an individual to whom a standardized test is administered and who takes the test at a location in the State of California.

(f) "Test sponsor" means an individual, partnership, corporation, association, company, firm, institution, society, trust, or joint stock company which sponsors a standardized test.

(g) "Testing year" means the 12 calendar months which the test sponsor considers either its operational cycle or its fiscal year.

Added Stats 1978 ch 1217 § 2.

Note—Stats 1978 ch 1217 also provides: § 6. It is the intent of the Legislature that the information disclosure requirements of this act be applicable to the entire testing year ending in 1979.

§ 99151. Report of closing date of testing year

Each test sponsor shall report the closing date of its testing year to the commission by March 31, 1979, or within 90 days after it first becomes a test sponsor, whichever is later.

Each test sponsor shall report any change in the closing date of its testing year within 90 days after the change is made.

Added Stats 1978 ch 1217 § 2.

§ 99152. Filing copies of test with commission

Within 90 days of the close of each testing year, the test sponsor shall file in the office of the commission five copies of the test which is equivalent to that in use in any of the prior three testing years, but that is no longer in use as a secure test, along with the corresponding acceptable answers.

If such a test is not available, then the test sponsor shall file instead a set of test questions which are not derived from a secure test and which are equivalent in content and of sufficient number to represent the secure test fairly, along with corresponding acceptable answers.

Added Stats 1978 ch 1217 § 2.

§ 99153. Filing data sufficient to describe psychometric quality of test: Compliance with guidelines of Standards for Educational and Psychological Tests of American Psychological Association

(a) Within 90 days of the close of each testing year, the test sponsor shall file in the office of the commission standard technical data sufficient to describe the psychometric quality of the test.

For purposes of compliance with this section, it is sufficient to deposit with the commission information conforming to the guidelines specified in the Standards for Educational and Psychological Tests of the American Psychological Association, which were in effect 180 days prior to the testing year, and which are appropriate to the particular test and its uses.

(b) Data, reports or other documents submitted pursuant to this section shall be accompanied by a description of the test, including, but not limited to, the title, purpose or purposes of the test and, when and where the test was administered in the state.

(c) No data, reports or other documents submitted pursuant to this chapter shall contain information in a form identifiable with individuals or particular postsecondary educational institutions.

Added Stats 1978 ch 1217 § 2.

§ 99154. Additional data filed with commission: Submission of financial disclosure information

(a) Within 135 days after the close of the testing year, each test sponsor shall report the following data on test takings, wherever they may occur, to the commission:

(1) The total number of times the test was taken during the testing year.

(2) The number of individuals who have taken the test once, who have taken it twice, and who have taken it more than twice during the testing year.

(3) The number of individuals who registered for, but did not take, the test.

(4) The total amount of fees received from test-takers by the test sponsor for the test for that testing year.

(5) The expenses to the test sponsor of the test, as follows:

(A) Those expenses which are directly attributable to the test.

(B) Those expenses which are indirectly attributable to the test. However, if the test sponsor also sponsors another test or related activities, it shall be sufficient for compliance with provisions of this section for the test sponsor to list indirectly attributable expenses, to the extent that they are identifiable, as they are proportionately related to the test. The test sponsor shall also list expenses indirectly attributable to all activities of the test's sponsor, including expenses not identifiable as attributable to a test.

(b) The financial disclosure required by this section shall be submitted in sufficient detail to indicate the major categories of revenues and expenses associated with the test. Except as provided in this section, the information for different tests administered by the same test sponsor shall be reported separately and by individual test.

Added Stats 1978 ch 1217 § 2.

§ 99155. Effect of separate fee charged test subjects for admissions data assembly services

If a separate fee is charged test subjects for admissions data assembly services, then the test sponsor shall report information concerning the data assembly services in substantially the same form as would be required for a test under Section 99154.

Added Stats 1978 ch 1217 § 2.

§ 99156. Information filed considered public record subject to disclosure under California Public Records Act: Rights protected by copyright laws

Any information or report required to be made or filed with the commission under this chapter is a public record subject to disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

Nothing in this section shall be construed to diminish or authorize the infringement of any rights protected by laws relating to copyright, to the protection of trade secrets, or to other proprietary rights.

Added Stats 1978 ch 1217 § 2.

§ 99157. Information provided subjects prior to test

Each test sponsor shall provide the following information to test subjects prior to the administration of a test:

(a) The purposes for which the test is constructed and is intended to be used.

(b) The subject matters included on such test and the knowledge and skills which the test purports to measure.

(c) The manner in which the test is scored and the relationship of the raw and scaled scores to the skills and knowledge it measures.

(d) The basis upon which such scores will be made available to persons or institutions.

(e) A representative set of sample test items.

Added Stats 1978 ch 1217 § 2.

§ 99157.5. Opportunity for test subject to examine questions and answers

(a) Within 90 days of the release to the test subject of the results of a standardized test as specified in subdivision (c), and upon the request of the test subject, the test sponsor shall provide to the test subject an opportunity to examine operational test questions and answers under closely monitored conditions. The examination shall occur at places to be designated by the test sponsor. Test sponsors shall establish a number of such places geographically designated throughout the state.

Unless authorized by the test sponsor, neither questions nor answers, nor copies of questions or answers, shall be removed from the facility, except by a representative of the test sponsor. Actual costs of an examination of test materials shall be borne by the test subject. During the examination of test materials, the test subject may file with a representative of the test sponsor, and with an educational institution, or institutions, seeking results of the test examined, a written protest to any question or answer.

(b) As an alternative to the procedure described in subdivision (a), and within 90 days of the release of the results of any standardized test score to the test subject, and upon request of the test subject, the test sponsor shall make available to the test subject the test materials, including operational test sections (questions), a copy of the test subject's answer sheet or a record of the test subject's response to each question, the test subject's raw scores, a copy of scoring and scaling instructions, a copy of the correct responses, and a copy of the conversion factor or table, or both.

Each test sponsor shall, prior to the administration of a test, give written notification to the test subject of his or her right to request and receive test disclosure as provided in this section, if the request is made within 90 days of the release of the test score to the test subject.

(c) Except for test administrations described in subdivision (d), the test sponsor shall provide to test subjects the test materials specified in subdivisions (a) and (b) for not fewer than 50 percent of regular test administrations, as determined by the test sponsor. If the application of 50 percent results in a number which includes a fraction, the number shall be rounded to the nearest larger whole number.

(d) In order to accommodate test subjects who, because of religion are unable to participate in regular test administrations, the test sponsor shall provide test materials specified in subdivisions (a) and (b) to test subjects of not fewer than one non-Saturday test administration during every 12-month period.

(e) Each test sponsor shall, prior to the administration of a test, give written notification to the test subjects of their right to request and receive test material as provided in subdivisions (a), (b), and (c), provided that such request has been made within 90 days of the release of the test score to the test subject.

(f) The test sponsors may charge a nominal fee, not to exceed the direct costs thereof, for test materials provided pursuant to this section.

(g) For the purposes of this section only, a "standardized test" or "test" means any test administered in California to at least 3,000 individuals during a testing year and which is designed for and formally required by institutions of postsecondary education in California for the purposes of admission to those institutions for undergraduate studies. The provisions of this section shall not apply to College Board Achievement Tests, or to the test of English as a foreign language.

Added Stats 1981 ch 729 § 1, operative July 1, 1982.

§ 99158. Distribution of information to facilitate interpretation of score: Information provided institution that test subject designates as test score recipient

In reporting test scores to test subjects, the test sponsor shall provide sufficient explanatory information to facilitate proper interpretation of the score or scores. The information shall be distributed in the following manner:

(a) Test subjects shall be provided with statements designed to provide information for interpreting the scores, including, but not limited to, explanations of:

(1) The test score scale.

(2) The scores and their meanings.

(3) Standard error of measurement of the test.

(b) Any postsecondary education institution or other organization which a test subject designates as a test score recipient shall be provided with all of the information specified in Section 99157 and in subdivision (a) of this section. The test sponsor shall provide such information prior to or coincident with the first reporting of a test score or scores to a recipient during a testing year. Such information shall be provided to the commission prior to or coincident with the first reporting of test scores to any test score recipient during a testing year.

The test sponsor shall provide such information once during a testing year in a manner deemed sufficient to assure access to the information by interested parties.

Added Stats 1978 ch 1217 § 2.

§ 99159. Submission of test sponsor's national or regional aggregation of data concerning predictive validity of test scores and grades

(a) In addition to the information required pursuant to subdivision (b) of Section 99158, the test sponsor shall submit to the parties listed therein and to the commission the test sponsor's most recent national or regional aggregation of data concerning the predictive validity of:

(1) Academic record or grades alone.

(2) Standardized test score alone.

(3) Academic record and test score combined.

(b) The data shall be disseminated pursuant to subdivision (b) of Section 99158.

Added Stats 1978 ch 1217 § 2.

§ 99160. Civil liability for intentional violation of chapter provisions

Any test sponsor who intentionally violates any provision of this chapter shall be liable for a civil penalty not to exceed seven hundred fifty dollars ($750) for each violation.

Added Stats 1978 ch 1217 § 2.

APPENDIX B

NEW YORK LEGISLATION

APPENDIX B

NEW YORK LEGISLATION

§ 340. Definitions

As used in this article: 1. "Standardized test" or "test" means any test that is given in New York at the expense of the test subject and designed for use and used in the process of selection for post-secondary or professional school admissions. Such tests shall include, but are not limited to, the Preliminary Scholastic Aptitude Test, Scholastic Aptitude Test, ACT Assessment, Graduate Record Examination, Medical College Admission Test, Law School Admission Test, Dental Admission Testing Program, Graduate Management Admission Test, and Miller Analogies Test. This article shall not apply to any state, federal, or local civil service test, any test used solely for placement, credit-by-examination or other nonadmission purpose or any test developed and administered by an individual school or institution solely for its own purposes *or any test, or portion of a test, designed to evaluate manual skills or other physical abilities.*

2. "Commissioner" means the commissioner of education of the state of New York.

3. "Test subject"[1] *means* an individual to whom a test is administered.

4. "Test agency"[1] *means* any organization, association, corporation, partnership, or individual or person that develops, sponsors or administers a test.

HISTORY:

Add, L 1979, ch 672, § 1, eff Jan 1, 1980.
Sub 1, amd, L 1980, ch 813, § 1, eff June 30, 1980, L 1981, ch 291, § 1, eff June 30, 1981.
Sub 3, amd, L 1980, ch 813, § 1, eff June 30, 1980.
The 1980 act deleted at fig 1 "shall mean".
Sub 4, amd, L 1980, ch 813, § 1, eff June 30, 1980.
The 1980 act deleted at fig 1 "shall mean".

RESEARCH REFERENCES AND PRACTICE AIDS:

52 NY Jur, Schools § 763.6.

CASE NOTES

In an Article 78 proceeding brought under the Freedom of Information Law to permit inspection and copying of examination questions in the Civil Service Examination, the "test release" policy adopted by the Department of Personnel pursuant to Freedom of Information Law § 87(2)(h) was not arbitrary or capricious in denying access to questions which the Department intended to reuse and which therefore had not been "finally administered" and were exempt from disclosure under § 87(2)(h) and Educ Law § 340. Social Service Employees Union v Cunningham (1981) 109 Misc 2d 331, 437 NYS2d 1005.

§ 341. Background reports[1]

1. Whenever any test agency prepares[1] *or* causes to have prepared[2] *research* which[3] *is* used in any study, evaluation or statistical report pertaining to a test *operational after January first, nineteen hundred eighty,* such study, evaluation or report shall be filed with the commissioner.

2. If any reports or other documents submitted pursuant to this section[4] *contain*

information identifiable with any[4] test subject *or test user institution,* such information shall be deleted[6] prior to[7] *filing with the commissioner.*

3. All[8] reports or other documents submitted pursuant to this section shall be public records.

HISTORY:

Add, L 1979, ch 672, § 1, eff Jan 1, 1980, amd, L 1980, ch 813, § 1, eff June 30, 1980.

The 1980 act deleted at fig 1 "and statistical data".

The 1980 act deleted at fig 1 a comma, at fig 2 "or provides the data", at fig 3 "are", at fig 4 "contains", at fig 5 "individual", at fig 6 "or obliterated", at fig 7 "submission" and at fig 8 "data,".

Section heading, amd, L 1980, ch 813, § 1, eff June 30, 1980.

RESEARCH REFERENCES AND PRACTICE AIDS:

52 NY Jur, Schools § 763.6.

§ 342. Disclosure of test contents

1. Within thirty days after the results of any standardized test are released, the test agency shall file or cause to be filed with the commissioner:

a. a copy of all test questions used in calculating the test subject's raw score;

b. the corresponding acceptable answers to those questions; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

2. Within ninety days after filing a standardized test pursuant to subdivision one of this section and for a period of not less than ninety days after the offer is made, the test agency shall provide to the test subject the opportunity to secure:

a. a copy of the test questions used to calculate the test subject's raw score;

b. a copy of the test subject's answer sheet, or answer record where there is no answer sheet, together with a copy of the correct answer sheet to the same test with questions used to calculate the test subject's raw score so marked; and

c. a statement of the raw score used to calculate the scores reported to the test subject.

The agency may charge a nominal fee for providing such information, not to exceed the direct cost thereof.

3. a. Notwithstanding subdivisions one and two of this section, a test agency may withhold from disclosure any test forms administered in New York in any given test program to not more than five percent of the anticipated test subjects annually or to not more than five thousand test subjects annually, whichever is less.

b. Prior to the beginning of a test agency's testing year, the test agency shall designate the dates upon which test forms to be filed with the commissioner will be used. The test agency shall inform potential test subjects of these dates.

4. Within three years after the administration in New York of a standardized test form not required to be disclosed under subdivision three of this section the test agency shall file the test form and the corresponding acceptable answers with the commissioner.

5. Subdivisions one, two, three, and four of this section shall not apply to College Board Achievement Tests or GRE Advanced Tests which shall be disclosed pursuant to subdivision six of this section regardless of volume.

6. Notwithstanding other provisions of this section, if a test agency has administered a standardized test to less than two thousand test subjects in New York annually, the test agency shall file with the commissioner at least once every three years:

a. a copy of all test questions used in calculating the test subject's raw score from one test form administered during that three year period;

b. the corresponding acceptable answers with the commissioner; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

7. Documents submitted to the commissioner pursuant to this section shall be public records and, in collecting this material, the State Education Department shall be considered an archive under Title 17 § 108 U.S.C

HISTORY:
Add, L 1980, ch 813, § 2, eff June 30, 1980.
Former § 342, add, L 1979, ch 672, § 1, eff Jan 1, 1980, repealed, L 1980, ch 813, § 2, eff June 30, 1980.

CROSS REFERENCES:
This section referred to in §§ 342-a, 343.

RESEARCH REFERENCES AND PRACTICE AIDS:
52 NY Jur, Schools § 763.6.

§ 342-a. Special administrations

1. When regular test administrations are given on days of religious observance which prevent attendance by test subjects at such regular administrations special administrations shall be offered with the same frequency as regular administrations as soon after or before as is possible, at comparable times, places and cost.

2. Provided, however, a test agency shall not be required to offer a greater number of special administrations than were offered during the base year commencing August first, nineteen hundred seventy-eight and ending July thirty-first, nineteen hundred seventy-nine unless the number of regular administrations is increased in any subsequent testing year, in which case the provisions of subdivision one shall apply.

3. No test subject shall by reason of religious belief be denied by a test agency, the opportunity to take a test which shall be disclosed pursuant to subdivisions one and two *of section three hundred forty-two of this article* during any twelve month period.

HISTORY:
Add, L 1980, ch 814, § 2, eff June 30, 1980.
Sub 3, amd, L 1981, ch 325, § 1, eff June 29, 1981.

§ 343. Notice

1. Each test agency shall provide, along with the registration form or score report for a test, the following information:

a. the purposes for which the test is constructed and is intended to be used;

b. statements designed to provide information for interpreting test results, including but not limited to, explanations of the test score scale, the standard error of measurement of the test, and a list of available correlations between test scores and grades, successful completion of a course, of study and parental income; however, where a range of the correlations of such studies is given, a median correlation must also be provided;

c. how the test scores will be reported, whether the raw test scores will be converted

in any way before being reported to the test subject and whether and how the test agency will use the test score in raw or transformed form by itself or together with any other information about the test subject to predict in any way the subject's future academic performance for any post secondary educational institution;

d. a complete description of any promises or covenants that the test agency makes to the test subject with regard to accuracy of scoring, timely forwarding of information, policies for notifying test subjects regarding inaccuracies in scoring or score reporting and privacy of information relating to the test subject;

e. whether or not the test scores are the property of the test subject, the time period during which the results will be retained by the test agency, and policies regarding storage, disposal and future use of test score data; and

f. how the test subject may obtain the information required to be disclosed under section three hundred forty-two of this article.

2. Any institution which is a test score recipient shall be provided with the information specified in this section. The test agency shall provide such information prior to or coincident with the first reporting of a test score or scores to a recipient institution. Such institution shall be encouraged to provide interpretive processing by qualified personnel where such personnel are available.

HISTORY:

Add, L 1980, ch 813, § 2, eff June 30, 1980.
Former § 343, add, L 1979, ch 672, § 1, eff Jan 1, 1980, repealed, L 1980, ch 813, § 2, eff June 30, 1980.

RESEARCH REFERENCES AND PRACTICE AIDS:

52 NY Jur, Schools § 763.6.

§ 344. Disclosure of test scores

The score of any test subject shall not be released or disclosed by the test agency to any person, organization, corporation, association, college, university, or governmental agency or subdivision unless specifically authorized by the test subject. A test agency may, however, release all[1] scores received by a test subject on a test to anyone designated by the test subject to receive the current score.

This section shall not be construed to prohibit release of scores and other information in the possession of a test agency for purposes of research leading to studies and reports concerning the tests themselves. Such studies and reports must contain no information identifiable with any individual test subject *or user institution unless authorized by that individual or institution.*

HISTORY:

Add, L 1979, ch 672, § 1, eff Jan 1, 1980, amd, L 1980, ch 813, § 3, eff June 30, 1980.
The 1980 act deleted at fig 1 "previous".

RESEARCH REFERENCES AND PRACTICE AIDS:

52 NY Jur, Schools § 763.6.

§ 345. Regulations

The commissioner shall promulgate regulations to implement the provisions of this article.

HISTORY:

Add, L 1979, ch 672, § 1, eff Jan 1, 1980.

§ 346. Consumer advisory committee

There shall be created a temporary committee to advise the legislature and make recommendations about this article. The committee shall consist of six members to be appointed as follows: two shall be appointed by the temporary president of the senate and one by the minority leader of the senate; two shall be appointed by the speaker of the assembly and one by the minority leader of the assembly. The members shall include students and other persons who represent the consumers of standardized admissions test. The committee shall select a chairman from its membership. This committee shall meet at least twice annually and shall expire on the first day of August nineteen hundred[1] *eighty-three.* The committee members shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties under this article.

HISTORY:

Add, L 1980, ch 813, § 4, eff June 30, 1980, amd, L 1982, ch 402, § 1, eff June 28, 1982.

The 1982 act deleted at fig 1 "eighty-two".

Former § 346, renumbered § 347, L 1980, ch 813, § 4, eff June 30, 1980.

§ 347. Violations

Any test agency which violates any section of this article shall be liable for a civil penalty of not more than five hundred dollars for each violation.

HISTORY:

Formerly § 346, add, L 1979, ch 672, § 1, eff Jan 1, 1980, renumbered § 347, L 1980, ch 813, § 4, eff June 30, 1980.

Former § 347, renumbered § 348, L 1980, ch 813, § 4, eff June 30, 1980.

§ 348. Severability

If any provision of this article shall be declared unconstitutional or invalid, the other provisions shall remain in effect notwithstanding.

HISTORY:

Formerly § 347, add, L 1979, ch 672, § 1, eff Jan 1, 1980, renumbered, § 348, L 1980, ch 813, § 4, eff June 30, 1980.

APPENDIX C

PROPOSED NEW JERSEY LEGISLATION

APPENDIX C

NEW JERSEY R-62
3/2/83

Assembly Committee Substitute for A-167 OCR

AN ACT concerning education, providing procedures for standardized testing and supplementing Title 18A of the New Jersey statutes.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

a. "Standardized test" or "test" means an examination developed by a test agency which:

(1) Is designed for use or used in the process of selection for admission to post secondary or professional educational institutions or their programs; or

(2) Is used for preliminary preparation for any test that is designed for use or used in the process of selection for admission to post secondary or professional educational institutions or their programs; or

(3) Is administered by a school to a group of students and for which the school receives test results, including scores or data, identifiable with individual test subjects. These tests shall include, but are not limited to, tests from which a test subject's results are recorded or placed within the permanent student record of the same individual; or

(4) Affects the distribution of State funds, but does not include a State, federal, or local civil service test or a test designed and used solely for credit by examination or non-admission placement in post secondary or professional educational institutions or any test developed and administered by an individual school or institution or employee thereof for its own purposes only.

b. "School" means a public school which educates persons for any part of grades kindergarten through 12.

c. "Test agency" means an agency, organization, association, corporation, partnership, or individual that develops, sponsors and administers a standardized test, but does not include an

individual school, school district, college, university, organization, corporation, partnership or individual that solely provides space or proctoring services for the administration of a test, nor a local school district which selects and uses a standardized test as part of its local educational assessment program.

d. "Test subject" means an individual to whom a standardized test is administered.

e. "Commissioner" means the Commissioner of the Department of Education and "chancellor" means the Chancellor of the Department of Higher Education.

f. "Raw score" means the score that all calculations are based on and that subsequent scores are derived from in the evaluation of a test subject's performance on a standardized test.

g. "Test program" means a group of tests administered by a test agency which are, for the purposes of comparison, the same, but are composed of some different test questions of similar significance, and may be asked in a different chronological order.

h. "Test score" or "score" means the value given to a test subject's performance on a test by a test agency, whether reported numerically, in percentile groups, or any other form of relative comparison.

i. "Testing year" means the 12 months which a test agency considers its operational cycle for the administration of a test program, which may or may not coincide with a fiscal, calendar, or school year.

j. "Test score recipient" means a person, organization, association, corporation, post secondary or professional educational institution, school, school district, governmental agency or subdivision to which the test subject requests or designates that a test agency report his score.

2. a. Whenever a test agency administers a post secondary or professional school admission or preliminary preparation test, it shall promptly submit to the office of the chancellor a copy of the technical manual which shall be available for inspection. Whenever a local school district administers a test, the technical manual shall be available for inspection.

b. Reports or other documents pursuant to this section shall be public records. Notwithstanding the provision of section 2 of P.L. 1963, c.73 (C.47:1A-2) to the contrary, a person having custody or control of the documents required to be filed under this act

shall not make photocopies of copyrighted materials for members of the public, but shall make these copyrighted materials available for inspection.

3. If the commissioner or chancellor determines that it is necessary to evaluate the validity, reliability or possible cultural bias of a test following its administration to test subjects, then State funds used to evaluate the test shall be used to fund independent evaluation agencies not involved in the development or promotion of the test program.

4. Test agencies shall provide, along with the registration form for a test in the case of a post secondary or professional school admission test or a preliminary preparation test, the following information:

a. The purposes for which the test is contracted and is intended to be used;

b. The subject matter included on the test and the knowledge and skills which the test purports to measure;

c. Statements designed to provide information for interpreting test results, including but not limited to an explanation of the test score scale, the standard error of measurement of the test, and a list, if available, of the median and range correlations between test scores and grades;

d. How the test score will be reported, whether the raw scores will be altered in any way before being reported to the test subject and whether the test agency will use the test scores in raw or transformed form solely or combined with any other information about the test subject to predict in any way the test subject's future academic performance for any educational institution;

e. A complete statement with regard to the accuracy of scoring, timely forwarding of information, policies for notifying test subjects regarding inaccuracies in scoring or score reporting and privacy of information relating to the test subject;

f. Whether or not the test scores are the property of the test subject, how long they will be retained by the test agency, and policies regarding storage, disposal and future use of test score data;

g. Explanations of any required fees and conditions of exemption therefrom and a description of a test subject's opportunities to request information pursuant to sections 8 and 10 of this act.

5. Prior to the administration of an elementary or secondary school test, the local school district shall provide to the parent or guardian of the test subject or to a test subject 18 years of age or older, the following information:

a. The purpose for which the test has been selected and is used in the local district educational assessment program;

b. The subject matter included on the test, and the knowledge and skills which the test purports to measure; and

c. The procedures used by the local school district to determine, interpret, report and record test scores.

6. Within 30 days after the results of a standardized test are released, the test agency shall file or cause to be filed in the local school district in the case of an elementary or secondary school test, and in the office of the chancellor in the case of post secondary admission or professional school admission or preliminary preparation tests:

a. A copy of the test questions used in calculating the test subject's raw score; and

b. The corresponding acceptable answers to those questions along with an explanation of the test agency's rationale in scoring those questions correct or incorrect.

7. A test agency that administers a standardized test for an individual fee shall, prior to or when reporting test results to the test subject, provide to the test subject a form, which he may complete and return to the test agency to request a copy of the test questions, his individual answer sheet and a copy of the correct answer sheet to the same test. The form shall be provided to the test subject at the expense of the test agency.

8. After the test has been filed with the local school district or the chancellor and within 90 days after the test results have been released to the test subject, a test subject 14 years of age or more or the parents or legal guardian of a test subject less than 14 years of age, may apply in writing to the test agency for a copy of:

a. The test questions used in determining the test subject's raw score; and

b. The test subject's individual answer sheet together with a copy of the correct answer sheet to the same test with questions counting toward the test subject's raw score so marked.

Written requests for information shall be honored within 60 days of receipt by the test agency. A test agency may charge a reasonable fee not to exceed the cost of materials and postage for sending information pursuant to sections 7 and 8 of this act.

9. Sections 6, 7 and 8 of this act do not apply to:

a. College Board Achievement Tests or Graduate Record Examination Advanced Tests, if at least one composite version of the test program given in the past three testing years is filed with the chancellor every three years.

b. A test program which, on the basis of past experience, can be expected to be administered to fewer than one thousand test subjects in a testing year, if at least one version of the test program given in the past three testing years is filed with the local school district in the case of elementary or secondary school tests or is filed with the chancellor in the case of a post secondary admission or professional school admission or preliminary preparation test, every three years.

c. Medical College Admissions Tests, if at least one composite version is filed with the chancellor every three years.

d. Any test, or section of a test, designed to evaluate manual skills or other physical disabilities.

10. A test agency may be exempt from sections 6 and 8 of this act if the test agency provides the test subject or his representative pursuant to this section an option to apply in writing for the opportunity to inspect:

a. The test questions used to calculate the test subject's raw score; and

b. A copy of the test subject's individual answer sheet together with a copy of the correct answer sheet to the same test with questions counting toward the test subject's raw score so marked.

A test subject or his representative pursuant to this section may apply for this inspection within 90 days after receiving his test score report. The test agency shall provide for this inspection within 60 days of the receipt of the written request from a test subject 14 years of age or more or from a parent or legal guardian of a test subject less than 14 years of age.

A test subject, parent, or legal guardian copying or taking any material he is allowed to inspect shall be guilty of a disorderly persons offense. The inspection shall occur at a reasonable time at a location not more than 10 miles from the original testing site.

11. When a test is administered on a day of religious observance, an alternate test administration date shall be available for those test subjects who for religious reasons are unable to attend the regular test administration date.

12. Notwithstanding any other provisions of this act, a test agency may withhold from disclosure a test administered in the State in any test program to not more than 5% of the total test subjects in a testing year or not more than 5,000 test subjects in a testing year, whichever is less, provided that these nondisclosed tests are used to accommodate the needs of test subjects who are handicapped or who for religious reasons are unable to take the test during the regular administration date; and that at least one of the tests is disclosed annually as provided in sections 6 and 8 of this act.

13. The score of a test subject shall only be disclosed by the test agency to a test score recipient, except in the case of elementary or secondary school tests. In those cases, the school or the school district where the test subject is a student may receive the test subject's scores without the specific authorization of the test subject. A test agency may release a test subject's score on all previous tests administered in a test program to a test score recipient. A test agency may also release scores and other information in the possession of the agency for the purposes of research leading to studies and reports concerning the tests themselves, if the studies and reports do not contain information identifiable with a test subject or an employee of the school, school district or institution in which the test subject is a student.

14. A test score recipient shall be provided with the information and interpretation specified in this act. A test agency shall provide a test score recipient with the information specified in this act prior to or coincident with the first reporting to a test subject or his parents or guardian as specified in this act.

Test score recipients are encouraged to provide interpretive processing by qualified personnel where these personnel are available.

15. A test agency shall not be liable for a penalty pursuant to section 16 of this act if it provides for test disclosure or inspection of test results pursuant to sections 7, 8 and 10 of this act on at least 70% of the tests it administers annually; provided that a test subject receives notice as to the test administration dates on which the test disclosure or inspection option will be available.

16. A test agency which violates any provisions of this act shall be subject to a penalty of not less than $500.00 nor more than $1,000.00 for each violation. Enforcement of penalties shall be by a summary proceeding in accordance with "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.) brought in the name of the commissioner or chancellor in the Superior Court.

17. The Board of Education and the State Board of Higher Education may adopt rules and regulations to implement this act.

18. This act shall take effect on September 1 next succeeding the date of enactment or 180 days following enactment, whichever is greater.

APPENDIX D

DEBATE ABOUT TESTING LEGISLATION *

* From Search for the Truth About "Truth in Testing" Legislation, published by the Education Commission of the States.

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APPENDIX D

THE DEBATE ABOUT TESTING LEGISLATION IN A NUTSHELL

1. Debate About Role and Power of Testing Companies

Anti-testing Sentiments	Pro-testing Sentiments
Tests have profound influence upon American lives and life chances.	Tests have little influence compared to family, social and educational influences, grade point average.
Testing companies are unaccountable to their dependent public--particularly true of the Educational Testing Service (ETS) and American College Testing (ACT).	Commercial test publishers are accountable to market forces; test makers, including ETS and ACT, are accountable to professional standards, education community, higher education communities, courts, client groups, trustees and Internal Revenue Service.
Testing companies are too secretive; test makers do not know enough about tests; researchers cannot study them.	Critics confuse security--a technical issue--with secrecy; ample test information is available both to test takers and qualified researchers.
Massive testing does more harm than good (e.g., consumes time better spent learning, alters curriculum, stigmatizes children, misleads public, etc.).	The public and higher education have asked for massive testing; testing produces information useful for improving education; it does more good than harm (e.g., takes little time, diagnoses problems, helps administrators, etc.).
Tests are inherently biased against pluralism, tend to further stratify society.	The culture is inherently biased; bias in tests is being minimized; don't blame the messenger; testing helps minorities.
Tests are widely misused and misunderstood.	Test companies try hard to curb abuse, educate users.

II. Debate About Quality of Standardized Machine-Scored Tests Used Primarily for Prediction

Critics of Standardized Tests	Defenders of Standardized Tests
Tests concentrate on easily measured cognitive skills, ignoring higher level skills (e.g., problem solving), imagination, creativity, etc.	Society values intellectual achievement, cognitive skills; education (especially higher education) stresses those skills; others (e.g., teachers) are better able to assess imagination, creativity, etc.
Theory upon which testing rests is simplistic, outdated and sketchy.	Theory upon which education rests may be simplistic, outdated and sketchy; test theory is better than critics think and always improving.
Test information is much less precise than testers pretend.	Test information is improving in precision and is better than massive subjectivity.
Tests are seldom valid even by test makers' standards.	Many tests are rigorously validated and most do what they are designed to do.
Tests are developed subjectively and always contain controversial items.	Tests are developed by educators and scholars, some of whom always disagree with others; in the main, they do what they are supposed to do.
Test scores do not predict success in later life.	Test scores accurately predict such things as academic success in first year of college, first year of medical or law school etc.; they are not designed to predict success in later life.
Formal qualities of multiple-choice tests convey messages that undercut reasoning skills, writing ability, accurate perception of the world.	No empirical data are offered to support such fears; testing consumes too little of a student's time to have such effects.

III. Debate About Need for Testing Legislation

Pro-legislation Sentiments	Anti-legislation Sentiments
Grade inflation, misuse have combined to give tests too much influence in admissions decisions.	Higher education's need for students has lessened importance of admissions test scores.
A commitment to "truth in lending," "truth in advertising," sunshine laws and consumerism should extend to an area as important as admissions testing.	Test publishers and higher education institutions already provide ample information and protection; analogies to consumer movements are misleading.
Because admissions tests have such influence, there is an overriding public interest at stake.	There are several competing public interests at stake; critics have not established an overriding need for legislation.
Legislation will promote greater accuracy, validity of tests.	Legislation calling for full disclosure will lower the quality of tests.
Legislation will encourage use of multiple criteria in selection process.	Most institutions already use multiple criteria and test agencies encourage the practice.
The admissions test industry is not accountable to anyone.	The industry is accountable to the psychometric profession, market forces, academic community.
	Federal legislation would constitute dangerous, if not unconstitutional, federal incursion into education.
	Legislation interferes with First Amendment right of colleges to determine who they want to teach.

IV. Debate About Full Disclosure and Other Aspects of Legislation

Arguments Against Full Disclosure

Students cannot learn much from examining their test items.

Teachers may try to increase aptitude test scores by teaching the test items, thus damaging curriculum.

Full disclosure will compromise test security; compromised security means less confidence in tests.

Release of items will lead to invalid interpretations and misunderstandings.

Accumulation of disclosures over the years will erode test quality and utility.

Good items are the result of a costly, technical and professional process; they should be husbanded to have long life.

Sample tests are sufficient.

It makes more sense to disclose a full specimen of the test before the test-taking session, so test taker knows what to expect.

Disclosure will remove economic competitive incentive to create new and better tests.

If admissions officers lose confidence in test scores, disadvantaged students will suffer.

Disclosure means fewer test administrations per year in order to keep a test secure as long as possible.

Disclosure will increase test development costs, thus the cost of tests to students; poorer students will suffer.

Disclosure will decrease amount of time available for development, leading to greater possibility of biased items creeping into tests.

Disclosure will benefit expensive coaching schools, further hurting poor students.

Disclosure makes comparability measurement more difficult.

Disclosure requirement constitutes seizure of private property without due process and in violation of proprietary rights protected by copyright laws.

IV. Debate About Full Disclosure and Other Aspects of Legislation (cont.)

Counterarguments About Full Disclosure

Students can learn about tests and test strategy from examining test questions.

Security need not be an issue; new measurement technology could enable testers to eliminate the problem.

Development costs would not increase as much as testers suggest.

Items now available only to expensive coaching schools would be available to everyone, benefiting poor students.

There are many solutions to the comparability problem; the laws do not adversely affect comparability measurement.

The fairness issue takes precedence over technical matters.

Disclosure will help admissions officers as well as students.

Arguments Against Release of All Studies, Evaluations or Statistical Reports Pertaining to a Test

(para. 341, New York; Sec. 4(a)(1)(A), Weiss Bill)

These provisions may interfere with academic and institutional freedom in violation of the First Amendment of the U.S. Constitution.